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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of)	
)	
PETITION TO AMEND RULES 8)	
37, 48, 50, 52, 53, 54, 55, 56, 57, 58)	Supreme Court No. R-17_____
59, 60, 61, 62, 63, 63.2, 64, 65, 66,)	
68, 69, 76, 78, 79, 84, AND 85 AND)	
TO ADOPT NEW RULE 50.1 OF)	
ARIZONA RULES OF PROCEDURE)	
FOR THE JUVENILE COURT)	
_____)	

Pursuant to Rule 28 of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts respectfully petitions this Court on behalf of the Indian Child Welfare Act (ICWA) Committee of the Arizona State, Tribal, and Federal Court Forum to amend Rules 8, 37, 48, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 63.2, 64, 65, 66, 68, 69, 76, 78, 79, 84, and 85 and to add a new Rule 50.1 of the Arizona Rules of Procedure for the Juvenile Court. These changes are proposed to incorporate recently adopted federal regulations that implement the Indian Child Welfare Act.

I. Background and Purpose of the Proposed Rule Amendments.

The United States Department of the Interior issued new regulations implementing the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901-1963. These regulations became effective December 12, 2016. See 23 C.F.R. §§ 23.101- 44. Previously the Bureau of Indian Affairs (BIA) had issued guidelines concerning ICWA that have been considered persuasive but did not have the full force and effect of law. The Arizona Rules of Procedure for Juvenile Court make reference to ICWA at appropriate places in the rules and recognize the BIA Guidelines. These new regulations have been implemented by the Arizona Courts through education programs and reference materials provided to judges. This petition proposes implementation of the new regulations through appropriate amendments to the rules.

II. Contents of the Proposed Rule Amendments and New Rules.

The proposed changes are based on a systematic review of the current rules in order to identify all references to “ICWA” and “Indian child” and to simply add a reference to the new federal regulations or to specific regulations, where appropriate, as additional governing authority. This is a sufficient recognition of many of the new regulations that more clearly pronounce rather than make changes in the current interpretation of ICWA. However, some of the regulations require specific attention in the rules in order to prompt a change in current

practice, to address a specific conflict, or to provide required procedures or specific criteria for findings.

The proposed changes in Rule 8(C) reflect the new requirement that when there is “reason to know” a child is an “Indian child” the child is presumed to be an “Indian child” for ICWA coverage purposes until the child is determined not to be an “Indian child.” Additionally, due to their significance, the committee proposes that the criteria stated in the regulations for “reason to know” be provided in the comment to Rule 8. Alternatively, this language could be adopted in Rule 8(C) itself. The New Mexico Children’s Court Rules Committee proposed [Rule Proposal 2016-064](#) that contains this language.

Due to the significance of jurisdiction, the committee proposes the addition of a Rule 8(D) on that subject and an additional paragraph in the comment containing the requirements stated in the federal regulations concerning the “good cause” exception to transfer of an ICWA case to tribal jurisdiction. This language could instead be included in Rule 8(D).

The comment to Rule 48 and Rule 50(A) are amended to recognize and authorize that, where appropriate under the circumstances of a case, the preliminary protective hearing may be held as an emergency hearing as provided in 25 U.S.C. § 1922 and 25 C.F.R. § 23.113.

The committee proposes replacement of the language in both Rule 50(C)(3) and Rule 52(D)(3) with the specific requirement of the new regulations regarding the responsibility to determine whether a child for whom there is reason to know the child is an “Indian child” is, in fact, an “Indian child.”

Due to the importance of foster care placement preferences under Section 1915 of ICWA, Subsection 23.132 of the regulations provide a specific process and criteria for the court to find good cause to deviate from these preferences. This process and criteria are proposed to be incorporated in the rules as a new Rule 50.1.

A few of the proposed changes are proposed as cleanup due to recognition of inconsistencies or lack of clarity in the rules in the course of implementing the new federal regulations. Rule 8(A) is clarified by recognizing incorrigibility cases are excluded from application of ICWA because these cases do not involve out of home placement and by specifying this provision refers to **criminal** transfer rather than ICWA transfer. The option of notice by certified mail has been added to the rules where relevant in order to conform to the regulations.

III. Pre-Petition Distribution and Comment.

Drafts of the proposed rules have been distributed for comment and changes to the Arizona, State, Tribal, and Federal Court Forum and participants in its

meetings and to the Forum's ICWA committee composed of state and tribal juvenile court judges, Arizona and tribal attorneys who handle dependency cases for their respective clients, state and tribal child welfare agency representatives and others, including professors, with particular expertise and interest in ICWA. Judge Quigley, Presiding Juvenile Court Judge in Pima County is a Co-chair of this committee. This petition will be presented for comment with a request for approval at the January 26, 2017 meeting of the Committee on Juvenile Court (COJC).

IV. Comment Periods and Effective Date of the Proposed New Rules.

Considering the primarily technical nature of the proposed rule changes, to implement changes in federal law, petitioner requests the Court schedule a comment period that terminates on March 17, 2017 and permit a supplemental petition to be filed by March 31, 2017 to allow petitioner to include any changes recommended by the COJC and any commenters prior to the Court's consideration of the petition. Since the motivating regulations for this petition are already in effect, petitioner requests accelerated consideration of this petition by the Court and, if the petition is approved, an effective date one week after adoption to allow time for distribution to the courts and interested parties.

Wherefore petitioner respectfully requests that the Supreme Court amend the Rules of Procedure of the Juvenile Court as set forth in Appendix A.

RESPECTFULLY SUBMITTED this ____ day of ____, 2017.

By _____
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APPENDIX A
17B A.R.S. Juvenile Court Rules of Procedure
Proposed Rule Changes

Rule 8. Applicability of the Indian Child Welfare Act

A. The Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., ~~shall~~ does not apply to delinquency, incorrigibility when there is no out-of-home placement or criminal transfer proceedings involving an Indian child.

B. Incorporation. All provisions of the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations ~~shall be~~ are incorporated by reference, including any amendments to ~~the Act~~ these provisions.

C. Findings. If the court determines or has reason to know the child is an Indian child as defined by the Indian Child Welfare Act and regulations, the court shall make all findings pursuant to the standards and burdens of proof as required by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations and otherwise treat the child as an Indian child subject to the Act unless and until it is determined on the record that the child does not meet the definition of an Indian child under the Act.

D. Jurisdiction. If the court determines or has reason to know the child is an Indian child as defined by the Indian Child Welfare Act and the proceeding is for foster care placement or termination of parental rights, the court shall determine whether to grant a petition to transfer the proceeding to tribal court according to the standards required by 25 U.S.C. § 1911(b) and 25 C.F.R. §§ 23.115-119.

Committee Comment

Because of the importance of the Indian Child Welfare Act and its applicability to state court proceedings, key provisions of the Act and Part 23 of Title 25 of the Code of Federal Regulations have been incorporated in these rules. However, not all provisions are set forth in these rules and the Act and Part 23 of Title 25 of the Code of Federal Regulations should be carefully reviewed, particularly as it relates to adoption proceedings. Any conflict between these rules and the Act and federal regulations shall be resolved in favor of the Act and federal regulations. ~~The Bureau of Indian Affairs Guidelines for State Courts in Indian Child Custody Proceedings may be of assistance in interpreting provisions of the Act.~~

The federal regulations governing Indian Child Welfare Act Proceedings, 25 C.F.R. Part 23, provide mandatory standards for applying the Indian Child Welfare Act in state courts. According to the regulations, a court has “reason to know” that a child is an Indian child upon the occurrence of any of the following: (1) any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child; (2) any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child; (3) the child who is the subject of the proceeding gives the court reason to know he or she is an Indian child; (4) the

court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a pueblo, reservation, or in an Alaska Native village; (5) the court is informed that the child is or has been a ward of a Tribal court; or (6) the court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe. 25 C.F.R. § 23.107.

The regulations governing petitions to transfer proceedings to tribal court, 25 C.F.R. §§ 23.115-119, address the criteria for ruling on transfer petitions and the determination of "good cause" to deny transfer. Under 25 U.S.C. § 1911(b), the court must grant a petition by a parent, Indian custodian, or the child's Tribe to transfer the foster care placement or termination of parental rights proceeding to tribal court, absent objection by either parent or tribal declination of transfer, or when there is good cause to deny transfer. The regulations provide that in determining whether good cause exists, the court must *not* consider any of the following: (1) whether the foster-care or termination of parental rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage; (2) whether there have been prior proceedings involving the child for which no petition to transfer was filed; (3) whether transfer could affect the placement of the child; (4) the Indian child's cultural connections with the Tribe or its reservation; or (5) socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems.

Rule 37. Definitions

A. – B. [no changes]

C. Definitions and Mandatory Placement Preferences pursuant to the Indian Child Welfare Act, 25 U.S.C. 1903 and 1915 and Part 23 of Title 25 of the Code of Federal Regulations:

1. – 7. [no changes]

Rule 48. Petition, temporary orders and findings, notice of hearing, and service of process

A. Petition. A dependency petition invokes the authority of the court to act on behalf of a child who is alleged to be a dependent child. A petition on behalf of a dependent child shall be generally in the form and contain the information required by law. The action shall be captioned, "In the Matter of _____ a person under the age of 18 years," may be based upon information and belief and shall state whether there is reason to know the child is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations. The petitioner shall indicate a request for in-home intervention by including the words "In-home intervention requested" in parentheses below the words "Dependency Petition."

B. – C. [no changes]

D. Service of petition. The petitioner shall serve a copy of the petition, notice of hearing and temporary orders upon those persons as required by law. The petitioner shall provide any parent, guardian or Indian custodian appearing at the preliminary protective hearing with a copy of the petition, notice of hearing and temporary orders which shall constitute service, as provided by law. Otherwise, the petition, notice of hearing and temporary orders shall be served in the manner provided for in Rules 4.1 or 4.2, Arizona Rules of Civil Procedure. Except for service of process that occurs at the preliminary protective hearing or the execution of an acceptance of service and waiver, service of process shall be completed no less than five (5) days prior to the court hearing. In dependency proceedings:

1. – 8. [no changes]

9. If the petition alleges or the court has reason to ~~believe~~ know the child at issue is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations, in addition to service of process as required by these rules, notification shall be given to the parent, Indian custodian and child's tribe or tribes. Notice shall be provided by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, notice shall be given to the Secretary of the Interior by registered or certified mail and the Secretary of the Interior shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice shall advise the parent or Indian custodian and the tribe of their right to intervene. No hearing shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary. The court shall grant up to twenty (20) additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.

10. The parent, Indian custodian or the child's tribe may waive the ten (10) day notice requirement, pursuant to the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations, for purposes of proceeding with the preliminary protective hearing within the time limit as provided by state law.

E. [no changes]

~~Committee Comment~~

It was the determination of the committee that a provision permitting the parent, Indian custodian or the child's tribe to waive the ten (10) day notice requirement is not in conflict with the Indian Child Welfare Act and is reflective of current practice in some counties. Some of the tribes currently waive the federal 10-day notice requirement ~~time~~ in order to permit the preliminary protective hearing to proceed within Arizona's ~~the~~ statutory time limits if the tribe is provided with sufficient information concerning the case in advance of the hearing. It is the belief of the committee that the inclusion of the waiver provision is necessary to ensure timely disposition of cases without interfering with the rights afforded the parent, Indian custodian or the tribe pursuant to the Indian Child Welfare Act. When the preliminary protective hearing is held as an emergency hearing under 25 U.S.C. § § 1922 and 25 C.F.R. 23.113 the 10 day notice requirement does not apply.

Rule 50. Preliminary Protective Hearing

A. Purpose. At the preliminary protective hearing, the court shall determine whether continued temporary custody of the child is necessary and shall enter appropriate orders as to custody, placement, visitation and the provision of services to the child and family. The preliminary protective hearing may be held as an emergency hearing as provided in 25 U.S.C. §§ 1922 and 25 C.F.R. 23.113.

B. Procedure. At the preliminary protective hearing, the court shall:

1. Inquire if any party has reason to ~~believe~~ know that the child at issue is subject to the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations;
2. – 12. [no changes]

C. Findings and orders. All findings and orders, including any agreements reached by the parties shall be in the form of a signed order or contained in a minute entry, and shall be provided to the parties at the conclusion of the hearing. The court shall:

1. – 2. [no changes]
3. ~~Order the petitioner to obtain verification of the child's Indian status from the child's Indian tribe or from the United States Department of Interior, Bureau of Indian Affairs, if the court has reason to believe the child is an Indian child; Confirm based on a report, declaration, or testimony included in the record or by court order that the Department of Child Safety or other~~ petitioner has used or will use due diligence to identify and work with all Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership);
4. – 5. [no changes]
6. If the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences, unless the proceeding is an emergency proceeding governed by Section 1922 of the Act; and
7. – 8. [no changes]

~~Committee Comment~~

It is the recommendation of the committee that, in addition to the admonition set forth in this rule, the court should consider providing the parent, guardian or Indian custodian with a written

copy of the admonition in order to protect the due process rights of the parent, guardian or Indian custodian. See Form 1.

Rule 50.1 Deviation from placement preferences.

The determination to depart from the placement preferences in Section 1915 of the Indian Child Welfare Act as provided in 25 C.F.R. § 23.132 must be made in the following manner:

(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding and the court.

(b) The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is “good cause” to depart from the placement preferences.

(c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:

(1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;

(2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

(3) The presence of a sibling attachment that can be maintained only through a particular placement;

(4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;

(5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

(e) A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

Rule 52: Initial Dependency Hearing

A. – B. [no changes]

C. Procedure. At the initial hearing the court shall:

1. Inquire if any party has reason to ~~believe~~ know that the child at issue is subject to the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations;

2. – 6. [no changes]

D. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the initial hearing the court shall:

1. – 2. [no changes]

3. ~~Order the petitioner to obtain verification of the child's Indian status from the child's Indian tribe or from the United States Department of Interior, Bureau of Indian Affairs, if there is reason to believe the child is an Indian child;~~ Confirm based on a report, declaration, or testimony included in the record or by court order that the Department of Child Safety or other petitioner has used or will use due diligence to identify and work with all Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership);

4. – 8. [no changes]

9. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

10. – 11. [no changes]

E. Continuance. The court may continue the initial dependency hearing, upon a showing of good cause, for reasons which may include:

1. Service of process and/or notification pursuant to the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations has not been completed as to the parties;

2. Additional time is requested by the child's tribe or if additional time is required to comply with the requirements of the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations; or

3. [no changes]

Rule 53: Settlement Conference

A. – C. [no changes]

D. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the settlement conference, the court may:

1. – 4. [no changes]

5. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

6. [no changes]

Rule 54: Findings and Orders

A. – B. [no changes]

C. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the pretrial conference, the court may:

1. [no changes]

2. Adjudicate the child dependent and enter findings and orders pursuant to Rule 55 and set or conduct a disposition hearing pursuant to Rule 56 if the court finds that the parent, guardian or Indian custodian failed to appear at the pretrial conference without good cause shown, had notice of the hearing, was properly served pursuant to Rule 48 and had been previously admonished regarding the consequences of failure to appear, including a warning that the hearing could go forward in the absence of the parent, guardian or Indian custodian and that failure to appear may constitute a waiver of rights and an admission to the allegations contained in the dependency petition. The court may adjudicate the child dependent based upon the record and evidence presented if the petitioner has established grounds upon which to adjudicate the child dependent;

a. - b. [no changes]

c. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

d. [no changes]

Rule 55: Dependency Adjudication Hearing

A. – D. [no changes]

E. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. As to each parent, guardian or Indian custodian, based upon the record and evidence presented, the court shall:

1. – 6. [no changes]

7. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

8. [no changes]

Rule 56: Disposition Hearing

A. – D. [no changes]

E. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. The court shall determine the appropriate case plan and shall:

1. – 5. [no changes]

6. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

7. – 8. [no changes]

Rule 57: Provision of Reunification Services Hearing

A. – B. [no changes]

C. Findings and Orders. All findings shall be in writing, in the form of a minute entry or order. If the court finds, by clear and convincing evidence, that reunification efforts are not required, the court shall:

1. – 5. [no changes]

6. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations; including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

7. [no changes]

Rule 58: Review Hearing

A. [no changes]

B. Notice.

1. **Right to participate.** At a proceeding to review the disposition orders of the court, the court shall provide the following persons notices of the review and the right to participate in the proceeding and any future proceedings:

a. The authorized agency charged with the child's care and custody and the child's tribe as required by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations.

b. Any foster parents in whose home the child resided within the last six months or resides at present, except for those foster parents who maintain a receiving foster home where the child has resided for ten days or less. The petitioner shall provide the court with the names and addresses of all foster parents who are entitled to notice pursuant to statute.

c. A shelter care facility or receiving foster home where the child resides or has resided within the last six months for more than thirty days. The petitioner shall provide the court with the names and addresses of all shelter care facilities and receiving foster homes that are entitled to notice pursuant to this paragraph.

d. The child's parent or guardian unless the parental rights of that parent or guardian have been terminated by court action or unless the parent has relinquished rights to the child to an agency or has consented to the adoption of the child as provided in A.R.S. § 8-107 and the child's Indian custodian as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations.

e. The child, if twelve years of age or older.

f. The child's relative, as defined in A.R.S. § 8-501, if that relative files a written notice of right of participation with the court.

g. A person permitted by the court to intervene as a party in the dependency proceeding.

h. A physical custodian of the child within the preceding six months.

i. Any person who has filed a petition to adopt or who has physical custody pursuant to a court order in a foster-adoptive placement.

j. Any other person as the court may direct.

2. [no changes]

C. – E. [no changes]

F. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing, the court shall:

1. – 6. [no changes]

7. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

8. [no changes]

Rule 59: Return of the Child

A. – D. [no changes]

E. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. The court shall:

1. – 4. [no changes]

5. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. 23.131 or whether there is good cause to deviate from the preferences; and

6. [no changes]

Rule 60: Permanency Hearing

A. – D. [no changes]

E. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. The court shall make findings based upon the evidence presented and shall:

1. – 4. [no changes]

5. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations; including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

6. – 7. [no changes]

Rule 61: Motion of Hearing, Service of Process and Orders for Permanent Guardianship

A. Motion. If the court determines that the establishment of a permanent guardianship is in the best interests of a dependent child, the court shall order that a motion for guardianship be filed by the Department of Child Safety or by the child's attorney or guardian ad litem within ten (10) days of the permanency hearing. The motion shall contain all information required by law and shall state whether there is reason to know the child is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations.

B. [no changes]

C. Service. The motion for guardianship and notice of hearing shall be served by the moving party upon the parties and any other person as provided by law, pursuant to Rule 5(c), Ariz. R. Civ. Pro. If the motion alleges or the court has reason to ~~believe~~ know the child at issue is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations, in addition to service of process as required by this rule, notification shall be given to the parent, Indian custodian and child's tribe. Notice shall be provided by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, notice shall be given to the Secretary of the Interior by registered or certified mail and the Secretary of the Interior shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice shall advise the parent or Indian custodian and the tribe of their right to intervene. No hearing shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary. The court shall grant up to twenty (20) additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe by registered or certified mail.

1. [no changes]

D. Orders. Upon the filing of a motion for guardianship, the court shall order the Department of Child Safety, an agency or a person designated as an officer of the court to conduct an

investigation and prepare a report addressing whether the prospective guardian is a fit and proper person to become guardian of the child and whether it is in the best interests of the child to grant the guardianship. If the child is an Indian child, the report shall address whether the prospective guardian falls within the placement preferences as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations or whether good cause exists to deviate from the placement preferences. A copy of the report shall be provided to the parties and the court ten (10) days prior to the initial guardianship hearing. The court may enter any other orders, pending the hearing, as the court determines to be in the best interests of the child.

Rule 62: Initial Guardianship Hearing

A. – B. [no changes]

C. Procedure. At the initial hearing the court shall;

1. Inquire if any party has reason to ~~believe~~ know that the child at issue is subject to the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations;

2. – 8. [no changes]

D. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing, the court shall:

1. – 4. [no changes]

5. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

6. [no changes]

Rule 63: Guardianship Adjudication Hearing

A. – E. [no changes]

F. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing the court shall:

1. – 3. [no changes]

4. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of

Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;

5. – 6. [no changes]

Rule 63.2: Initial Successor Permanent Guardianship Hearing

A. – B. [no changes]

C. Procedure. At the initial successor permanent guardianship hearing, the court shall:

1. Inquire if any party has reason to ~~believe~~ know that the child at issue is subject to the Indian Child Welfare Act;

2. [no changes]

D. – E. [no changes]

Rule 64: Motion, Petition, Notice of Hearing and Service of Process and Orders

A. Motion for Termination of Parental Rights. If the court determines that termination of parental rights is in the best interests of a dependent child, the court shall order that a motion for termination of parental rights be filed by the Department of Child Safety or the child's attorney or guardian ad litem within ten (10) days of the permanency hearing. The motion shall allege the grounds for termination of parental rights as provided by law and shall state whether there is reason to know the child is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations.

B. Petition for Termination of Parental Rights. If the child at issue is not a dependent child or is a dependent child who was the subject of a dependency petition filed prior to July 1, 1998, the petitioner shall file a petition for termination of parental rights, pursuant to A.R.S. § 8-534 and shall state whether the child is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations. Nothing in this rule shall preclude the filing of a petition in those cases where the child was the subject of a dependency petition filed after July 1, 1998.

C. [no changes]

D. Service. If the motion or petition alleges or the court has reason to ~~believe~~ know the child at issue is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations, in addition to service of process as required by this rule, notification shall be given to the parent, Indian custodian and the child's tribe or tribes. Notice shall be provided by registered or certified mail with return receipt requested. If the identity or

location of the parent or Indian custodian cannot be determined, notice shall be given to the Secretary of the Interior by registered or certified mail and the Secretary of the Interior shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

E. [no changes]

Rule 65: Initial Termination Hearing

A. – B. [no changes]

C. **Procedure.** At the initial hearing the court shall:

1. Inquire if any party has reason to ~~believe~~ know that the child at issue is subject to the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations;

2. – 7. [no changes]

D. **Findings and Orders.** All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing, the court shall:

1. – 3. [no changes]

4. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

5. [no changes]

Rule 66: Termination Adjudication Hearing

A. – E. [no changes]

F. **Findings and Orders by the court.** All findings and orders shall be in the form of a signed order or set forth in a signed minute entry. At the conclusion of the hearing the court shall:

1. [no changes]

2. If the moving party or petitioner has met its burden of proof, the court shall:

a. – d [no changes]

e. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.

3. [no changes]

Rule 68: Definitions

A. [no changes]

B. 1 – 7 [no changes]

8. **Adoptive Placement Preferences.** In any adoptive placement of an Indian child, a preference shall be given, where the child's tribe has not established a different order of preference and in the absence of good cause to the contrary, to a placement with:

- a. A member of the Indian child's extended family;
- b. Other members of the Indian child's tribe; or
- c. Other Indian families.

Rule 69: Appointment, Appearance and Withdrawal of Counsel

A. **Appointment.** The court may appoint counsel for those persons entitled to counsel and determined to be indigent as provided by law, these rules or the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations. In determining whether a person is indigent, the court shall:

1. [no changes]

B. – D. [no changes]

Rule 76: Service of Process

A. [no changes]

B. **Notice.** If the petition to adopt alleges or the court has reason to ~~believe~~ know the child at issue is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations, in addition to service of process as required by these rules, notification shall be given to the parent, Indian custodian and child's tribe of any involuntary

proceeding involving an Indian child. Notice shall be provided by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Secretary of the Interior by registered or certified mail and the Secretary of the Interior shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice shall advise the parent or Indian custodian and the tribe of their right to intervene. No hearing shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary. The court shall grant up to twenty (20) additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.

Rule 78: Temporary Custody

A. Petition for Temporary Custody. A person seeking temporary custody of child shall file a petition and a notice of hearing with the clerk of the court within five (5) days of obtaining the child. The petition shall set forth how the child came into the prospective adoptive parent's care, how long the child has resided with the prospective adoptive parent, why continued custody is in the best interests of the child and whether there is reason to know the child is subject to the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations.

E. Findings and Orders. All findings and orders shall be in writing and signed by the court, in the form of an order or minute entry. The court shall;

1. [no changes]
2. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.

F. – G. [no changes]

Rule 79: Petition to Adopt

A. Petition to Adopt. The petition to adopt and notice of hearing shall be filed with the clerk of the court. A petition to adopt shall be captioned, “In the Matter of ___, a person under the age of 18 years,” and may be based upon information and belief. In addition to information required by law, each petition to adopt shall contain the following information:

1. Whether there is reason to know the child to be adopted is an Indian child subject to the requirements of the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations. If the Act applies, the petition shall include the following:

a. Whether the placement preferences required by Section 1915 of the Act and 25 C.F.R. § 23.130 have been complied with;

b. – d. [no changes]

2. – 4. [no changes]

B. – C. [no changes]

Rule 84: Hearing to Finalize Adoption

A. – B. [no changes]

C. Procedure. At the hearing the court shall:

1.-5. [no changes]

6. If an Indian child subject to the Act is being adopted, the court shall determine whether:

a. The tribe was notified of the proceedings and the right to intervene, if applicable;

b. The parent or Indian custodian's consent to the adoption was taken in accordance with the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations;

c. The placement complies with the preferences set forth in Section 1915 of the Act and 25 C.F.R. § 23.130 or whether good cause exists for deviation from the placement preferences; and

d. [no changes]

D. Findings and Orders. The court shall make its findings in writing, in the form of a minute entry or order and shall grant or deny the petition to adopt at the conclusion of the hearing. The court may take the matter under advisement if information required by law had not been received by the court prior to or at the hearing, as required by these rules. If the Indian Child Welfare Act applies, the court shall make findings and enter orders pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations.

1. [no changes]

Rule 85: Motion and Hearing to Set Aside Adoption

A. Motion to Set Aside Adoption. A person seeking to set aside a final order of adoption shall file a motion to set aside the adoption with the clerk of the court. The motion shall allege grounds only as permitted by Rule 60(b)-(d), Ariz. R. Civ. P. or by the Indian Child Welfare Act

and Part 23 of Title 25 of the Code of Federal Regulations. Upon receipt of the motion, the court shall set an initial hearing within ten (10) days and shall advise the parties as to the date, time and location of the initial hearing. If there is reason to know the child is an Indian child, the court shall proceed in the manner set forth in the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations.

B. – F. [no changes]

G. Findings and Orders. The court shall make its findings in writing, in the form of a minute entry or order. The court shall advise the parties of their right to appeal and shall enter orders concerning the custody of the child if the adoption is set aside. If the Indian Child Welfare Act applies, the court shall make findings and enter orders pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations.